

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SMITH KLINE & FRENCH)
LABORATORIES LIMITED and)
SMITHKLINE BEECHAM)
CORPORATION d/b/a)
GLAXOSMITHKLINE,)
)
Plaintiffs,)
)
v.)
)
TEVA PHARMACEUTICALS USA, INC.,)
)
Defendant.)
_____)

Civil Action No. 05-197-GMS

[PROPOSED] SCHEDULING ORDER

This _____ day of _____, 2005, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(b) on July 28, 2005, at 9:00 a.m., and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before August 5, 2005.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before November 4, 2005.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than November 28, 2005. If defendant elects to rely on advice of counsel as a defense to willful

infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiffs no later than November 28, 2005.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on March 23, 2006 at 10:00 a.m. The *Markman* hearing is scheduled for one day. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before February 23, 2006, the parties shall submit a final joint claim chart which shall include citations to intrinsic evidence. The parties shall exchange opening claim construction briefs on March 2, 2006, and the answering claim construction briefs on March 16, 2006.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before May 31, 2006. Expert discovery in this case shall be initiated so that it will be completed on or before September 27, 2006.

a. **Discovery Matters.** Should counsel find they are unable to resolve a discovery matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the conference, by hand delivery or facsimile at (302) 573-6472, the party seeking relief shall file with the court a letter agenda not to exceed two (2) pages outlining the issues in dispute. Should the court find further briefing necessary upon conclusion of the telephone conference, the court shall order the party seeking relief to file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers Filed Under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within 10 days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact Magistrate Judge Thyng to schedule a settlement conference with counsel and clients.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than June 14, 2006. Answering letter briefs shall be no longer than five (5) pages and filed with the court no later than June 28, 2006. Reply letter briefs shall be no longer than three (3) pages and filed with the court on or before July 6, 2006. The Court shall hold a status teleconference to hear argument and to determine whether the filing of any motion will be permitted on July 12, 2006, at 11:00 a.m. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** Should the Court permit the filing of summary judgment motions an opening brief and affidavits, if any, in support of the motion shall be served and filed within two weeks of the Court's ruling on the parties' letter briefs. Parties must submit an original and two (2) copies. Briefing will be presented pursuant to the Court's Local Rules.

10. **Application by Motion.** Except as provided in this Order or for matters relating to scheduling, any application to the Court shall be by written motion filed with the Clerk. Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the court believes that oral argument is necessary, the Court will schedule a hearing pursuant to Local Rule 7.1.4.

12. **Status/Daubert Conference.** On or before October 17, 2006, the parties shall submit a joint agenda identifying any Daubert issues that the parties intend to raise. The Court will hold a telephone conference on October 24, 2006, at 10:00 a.m., to discuss Daubert issues identified in the joint agenda.

13. **Pretrial Conference.** On November 21, 2006 the Court will hold a Pretrial Conference in Chambers with counsel beginning at 10:00 a.m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosures requirement in Federal Rule of Civil Procedure 26(a)(3). Motions *in limine*: No party shall file more than ten (10) motions in limine. Briefs (**opening, answer, reply**) on all motions *in limine* shall be filed by October 23, 2006, with parties exchanging opening briefs on October 11, 2006, and answering briefs on October 18, 2006. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the court

the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before October 23, 2006. Plaintiffs' counsel shall submit a draft of the pretrial order containing the information plaintiffs propose to include in the draft, and defendant's counsel shall, in turn, provide to plaintiffs' counsel any comments on the plaintiffs' draft as well as the information defendant proposes to include in the proposed pretrial order. The parties shall negotiate in good faith to arrive at a mutually acceptable schedule for the exchange of drafts of the pretrial order and seek the Court's guidance as necessary. The parties shall agree to such a schedule no later than September 1, 2006. If the parties have been unable to agree upon a schedule, the parties will jointly seek the Court's assistance no later than September 8, 2006.

14. **Trial.** This matter is scheduled for a 5 day bench trial beginning at 9:00 a.m. on December 18, 2006.

15. **Scheduling.** The parties shall direct any requests or questions regarding the scheduling and management of this matter to Chambers at (302) 573-6470.

16. **Attached Addendum.** An addendum is attached summarizing and setting forth additional scheduling dates.

UNITED STATES DISTRICT JUDGE

Addendum to Scheduling Order
Civil Action No. 05-197-GMS

Event	Date
Fact Discovery	
Exchange of Initial Disclosures	August 5, 2005
Motion to Amend Pleadings	November 4, 2005
Motion to Join Additional Parties	November 4, 2005
Notice of Reliance on Advice of Counsel as a Defense to Willful Infringement, Production of Opinions of Counsel, and Production of all Related Materials	November 28, 2005
Completion of Fact Discovery	May 31, 2006
Markman Proceedings	
Exchange of claim terms to be construed and proposed constructions	February 2, 2006
Deadline for parties to meet and confer regarding narrowing and reducing the number of claim construction issues	February 9, 2006
Submission of Joint Claim Construction Chart	February 23, 2006
Markman Briefs	Opening: March 2, 2006 Response: March 16, 2006
Markman Hearing	March 23, 2006, 10:00 a.m.
Expert Discovery	
Opening Expert Reports (burden of proof)	June 28, 2006
Answering Expert Reports	August 2, 2006
Reply Expert Reports	August 23, 2006
Completion of Expert Discovery	September 27, 2006
Dispositive Motions	
Letter Briefs Seeking Permission	Opening: June 14, 2006 Response: June 28, 2006 Reply: July 6, 2006
Hearing Concerning Permission to File Summary Judgment Motions	July 12, 2006, 11:00 a.m. by telephone
Summary Judgment Briefing (if permitted)	Opening Brief submitted two weeks after Court's ruling on letter briefs; response and reply briefs submitted in accordance with Local Rules
Summary Judgment Hearing	At Court's Discretion
Trial Phase	
Exchange of Drafts of Pretrial Order	On a schedule mutually agreed upon by parties. Parties shall reach agreement regarding schedule by September 1, 2006, and, if unable to agree, shall jointly

Event	Date
	seek the Court's assistance no later than September 8, 2006.
Motions in Limine	Opening: October 11, 2006 Response: October 18, 2006 Reply: October 23, 2006
Submission of Joint Agenda Identifying Daubert Issues	October 17, 2006
Submission of Joint Proposed Pretrial Order	October 23, 2006
Teleconference to Discuss Daubert Issues	October 24, 2006, 10:00 a.m.
Pretrial Conference	November 21, 2006, 10:00 a.m.
Trial	December 18, 2006, 9:00 a.m.